
A *Sharī'ah* Appraisal of the Convention on Elimination of all Forms of Discrimination against Women (Cedaw), 1979

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ABSTRACT

This research paper presents a Shariah appraisal of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), 1979. A critical analysis of CEDAW in the light of Islamic laws is of great significance to measure the level of compatibility between the two. The article highlight the provisions that are in contravention to the spirit of Islamic law. This will help in identifying the provisions of the instruments that may be considered for reservations by Muslim states. Moreover, it would also assist the Muslim States to recognize the provisions which are in conformity to the Islamic laws, so that they could endeavour to ascertain its implementation in their respective domestic laws. Hence, the research at hand integrates a two-fold purpose of attempting to incorporate the compatible laws of CEDAW in the legal system of the Muslim States in an effective manner and striving to mitigate the discrepancies in the document by presenting harmonious recommendations to the International legislators.

KEYWORDS: CEDAW, Islamic laws, Women, Discrimination, Rights etc.

INTRODUCTION

Gender equality has always been a major concern of the Municipal and International laws. But for the sake of achieving this universal norm, the emphasis has always been laid down on the execution and enhancement of Women Rights. The vehemence given to this particular gender right by paying almost no special heed to enactment of laws for the opposite gender i.e. the Men Rights depicts the deep-rooted global stereotype regarding Women discrimination. Not only the International law legislators, but almost all the States of the world have always been striving to form such laws which would facilitate the protection of Women Rights. The United Nations, which is deemed to be the most prominent legislator, administrator and executor of the International laws, has a long history of addressing these rights and it considers the safeguard of Women Rights to be the most fundamental guarantees of employing human rights. The charter of the United Nations outlines one of its goals to be the re-affirmation of equal rights of men and women. Furthermore, the Articles 1, 13 and 55 of the charter repeatedly prohibit the discrimination on the basis of sex to promote equality of gender in furtherance of ensuring respect for the human rights.¹ After a considerable discussion and insistence on the use of a gender-neutral term instead of the term 'all men',² the Universal Declaration of Human Rights (which was adopted in 1948), also proclaimed the equal entitlement of men and women regarding the rights it contained. Other two human rights treaties namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also prohibited discrimination based on sex and ensured equality of men and women concerning the rights which they both incorporated. The Member States of the United Nations, in 1967, adopted the Declaration on the Elimination of Discrimination against Women which declared the discrimination against women as an offence against human dignity. It also called on the States to establish appropriate legal protection for equal rights of both the men and women and to abolish all the customs, laws, regulations and practices that might be discriminatory against women.

Less than a year later, the Convention on Elimination of All Forms of Discrimination against Women, abbreviated as CEDAW, was adopted by the United Nations and presented for signature, ratification and accession on 18th of December, 1979 by the General Assembly Resolution 34/180.³ In pursuance of CEDAW's own Article 27 (1), the document was brought into force on 3rd of September, 1981. It entails 99 signatories and 189 State Parties have

ratified it, amounting to about over 90% of the members of the United Nations.⁴ The convention articulates the meaning, nature and forms of discrimination and declares States' obligation of elimination of such discrimination and assurance of substantive equality.

The Islamic law on the other hand, though misrepresented on extensive forums, when explored deeply connotes privileged, more protected and dignified rights of women. The rulings portrayed by anti-Islam propagators and even conservative Islamic scholars as mediums of women's legal and social subordination along with their physical and intellectual inferiority, when scrutinized and interpreted in relevant contexts are revealed to be factually the evidences of their privilege, dignity and eminence. The Holy Quran has never reserved the fundamental rights for men alone while guaranteeing them strongly. Islam not only avoids distinction on basis of sex but also lays down equal responsibility of actions on men and women⁵ and declares: "Every soul is hostage to what it has earned."⁶ The non-sexist word of 'soul' used by the Quran at various places reflects gender-neutrality. In Islam, the criterion for distinguishing between human beings is 'righteousness' only.⁷ The rights of life, property, freedom, education, justice, religion etc. are all vested in both the men and women in equal proportions. Nevertheless, there exist numerous matters in which Islamic law differs from the conventional and prevailing laws of women. The rational and manner of these differences lead to application of certain reservations on various women rights' laws enacted nationally and internationally. A thorough and critical study of the CEDAW through the Islamic legal lens is extremely crucial to draw out the similarities and discrepancies which both the laws hold.

The Preamble

The Preamble of the Convention on Elimination of All Forms of Discrimination against Women 1979, while addressing the State Parties recalls the significance of dignity, worth and equal rights of men and women. It also reaffirms the aspiration of UDHR regarding the non-admissibility of any form of discrimination including the distinction based on sex and also obligates the State Parties to ascertain the equal political, economical, social, civil and cultural rights for both the men and women. The preamble also admits the continuous existence of discrimination against Women despite of formation of various administering instruments, which is an obstruction to the prosperity of the society and to the development of the potentialities of Women. It also reveals its concern regarding the

poverty of women and their inaccessibility to food, health, education and employment. The preamble emphasizes that the eradication of all forms of racial discrimination, realization of peoples' rights, assurance of self-determination and independence by mutual cooperation of the States shall surely contribute to the attainment of complete equality between both the genders. It also declares that the maximum participation of women in all fields on equal footings with the men is indispensable for achieving the ultimate welfare in the World.

In Islamic law, men and women are reckoned equal in numerous aspects. When it comes to the source of creation and spiritual human nature, the Quran states:

O mankind: Reverence your Guardian Lord Who created you from a single person created of like nature his mate and from them twain scattered (like seeds) countless men and women; reverence Allah through Whom you demand your mutual (rights) and (reverence) the wombs (that bore you): for Allah ever watches over you.⁸ and

It is He who created you from a single person and made his mate of like nature in order that he might dwell with her (in love). When they are united she bears a light burden and carries it about (unnoticed). When she grows heavy they both pray to Allah their Lord (saying): "If You give us a goodly child we vow we shall (ever) be grateful".⁹

Further, as both of the genders are created with the same spiritual nature (*nafsin wāhidah*), both are the recipients of **Divine Breath** as Allah says: "And when I have proportioned him and breathed into him of My [created] soul, then fall down to him in prostration."¹⁰

Allah has affirmed both of them, without any distinction, to be dignified and His trustees on earth: "And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference."¹¹

Same religious and moral obligations are conferred upon both the men and women and both undergo the consequences of their deeds; as established in the Holy Book: "If any do deeds of righteousness be they male or female and have faith they will enter paradise and not the least injustice will be done to them."¹²

It has been observed that hundreds of years ago, before the UDHR or other international conventions had come up with the

realization to use gender-neutral terms or to highlight both the genders while conferring rights, the Holy Quran has specified both the genders distinctively in order to reveal the insistence on parity of both in various perspectives:

Indeed, the Muslim men and Muslim women, the believing men and believing women, the obedient men and obedient women, the truthful men and truthful women, the patient men and patient women, the humble men and humble women, the charitable men and charitable women, the fasting men and fasting women, the men who guard their private parts and the women who do so, and the men who remember Allah often and the women who do so - for them Allah has prepared forgiveness and a great reward.¹³

At no place has the Quran acknowledged the superiority of the men over women. Some scholars erroneously interpret the word “qiwāmah” as to be superior, but it has been translated and proved through context by many scholars that the word denotes ‘responsibility, maintenance and protection’.

There are numerous Ahādīth of the Holy Prophet ﷺ which stress upon the prohibition of discrimination of all forms and assurance of equality for all. A number of traditions, the space for the mention of which would not suffice here, are clear evidences of equality of men and women in obligations, rights, rewards, criminal liabilities, punishments, just and fair treatment etc. To bring the significance of fulfilment of the rights, inflated dignity, honour and kindness with women into prominence, the Holy Prophet ﷺ has proclaimed high rewards in separate and various traditions for the compassion with mother, daughters and wives.

It is therefore evident that the preamble of CEDAW is in compliance with the Islamic law, as far as upholding the dignity, honour, equal justice and fairness of women is concerned. But there exist certain reservations of Islamic law over the grant of similar economic, political and cultural rights in the same manner for both. This incongruity shall be discussed in the substantive portion of the convention’s analysis.

Article 1: Definition of Discrimination

Article 1 of the Convention integrates a comprehensive definition of discrimination against women. It declares any intentional and unintentional treatment disadvantaging the women or

prohibiting them to exercise human and fundamental rights to be discrimination against them. The convention seeks to not only eliminate the sex-based discrimination, but also to eradicate any discriminatory behaviour which could be adverse to women.¹⁴ It declared all kinds of exclusions, distinctions and restrictions on the basis of sex, which would affect in any way the recognition and enjoyment of women's various rights and their equality with men, as discrimination against them.

Islamic law, as stated earlier, treats the men and women on equal terms of spirituality, ethics and humanity. Apart from the equality perspective, various Islamic injunctions oblige elimination of discrimination; rather assert provision of reverence for women by treating them with kindness and justice. What more perfect could any law enact to eradicate such discrimination than by declaring the person best who treats women in the best manner? It is narrated from the Holy Prophet ﷺ, "The most complete of the believers in faith, is the one with the best character among them. And the best of you are those who are best to your women."¹⁵

Allah's Apostle ﷺ also stated: "Treat women nicely, for a women is created from a rib, and the most curved portion of the rib is its upper portion, so, if you should try to straighten it, it will break, but if you leave it as it is, it will remain crooked. So, treat women nicely."¹⁶

To abolish every bit of discrimination, the Prophet ﷺ commanded: "You should feed her when you eat, clothe her when you clothe yourself, do not strike her on the face, and do not rebuke her or separate from her except inside the house"¹⁷.

Plentiful traditions abolish discrimination of women in different perspectives and give more inclusive definitions of equal rather superior treatment of women and purge of discrimination against them, as compared to CEDAW's definition.

Article 2: Obligations of States Parties

The State Parties are obliged under Article 2 of the Convention to take all necessary measures including the formulation of principles and appropriate laws which would assist in achieving complete eradication of discrimination against women. It also requires establishment of effective legal protection of women's rights equal to that of men through competent relevant forums. Further, bringing the existing institutional laws in conformity with the obligation of refraining from any practice of discrimination against women was made essential. The whole article attempts to collect the

States' attention towards the necessity of modification of the existing national laws, regulations, customs and practices etc. in a manner to abolish whatever amounts to discrimination against women along with repulsion of all the national penal laws which would constitute any form of such discrimination.

Islamic law approves the notion of this Article, rather it obligates the States and the State rulers to ascertain whatever is right and to forbid every wrong in the land of which they hold the power. Granting complete rights to women is a declared virtuous act in Islamic law, whereas discriminating and disrespecting them in any form is an established wrong, which has to be uprooted according to the verse of the Holy Quran:

“Those who, if We granted them power in the land, maintain the prayer, give the zakāt, and bid what is right (virtuous) and forbid what is wrong (evil). And with Allah rests the outcome of all matters”¹⁸.

Allah's Apostle stated:

Everyone of you is a guardian and is responsible for his charges. The ruler who has authority over people, is a guardian and is responsible for them, a man is a guardian of his family and is responsible for them; a woman is a guardian of her husband's house and children and is responsible for them; a slave ('Abu) is a guardian of his master's property and is responsible for it; so all of you are guardians and are responsible for your charges.

Certain other traditions also assert the State's and ruler's responsibility to take care and protect the ruled ones, for they would be questioned for them. The penal laws for men and women are almost same for both and no discrimination in this regard is detected; rather the Islamic law forbids punishment on women in some cases; for instance prohibition of infliction of death penalty upon the woman who is in her pregnancy or is breastfeeding or weaning her child.¹⁹ Thus, no inconsistency to Islamic rulings is found in Article 2 of the Convention.

Article 3 & 4: Appropriate Special and Temporary Measures to Combat Discrimination

Article 3 directs the State parties to take suitable measures and modify the legislations relevant to all fields to enable the progression of women in a manner to accomplish enjoyment of fundamental freedom and equal human rights. Article 4 of the Convention conveys that mere grant of *de jure* equality to the women does not guarantee their *de facto* equal treatment. To boost up attainment of actual equality, positive special measures can be adopted and continued by

the States until the discriminatory practices persist to exist. Hence, the measures are impermanent in a sense that as soon as the objectives of equal treatment and opportunity are attained, the special measures should be held back.²⁰ According to the second paragraph of Article 4, any special measures intended for the protection of maternity shall not be considered discriminatory. The convention does not elaborate the term ‘maternity’, but it is interpreted by some to articulate a ‘protective’ purpose.²¹ This indicates that in some countries entering into certain places or employments would be detrimental to the mother and child’s interests and hence might be prevented. This form of preclusion is not considered to be discriminatory according to CEDAW.

Islamic law, as stated earlier supports and promotes the State and its rulers to implement all necessary measures to attain a virtuous or right act. As far as the maternity protection requirement of CEDAW is concerned, Islam not only realizes the sufferings of pregnant women, delivering and nourishing mothers but has also declared exalted position for them and made gratefulness towards them an obligation, in recompense of the hardships which they bear during their pregnancies, birth-giving process, breast feeding and upbringing of the children.²² The rulings of Quran and Sunnah in the preservation of maternity rights particularly are much more inclusive than those mentioned in the International Conventions. The Quran and Ahādīth have insisted on taking care of various maternal rights of women along with tidings of high rewards for them.²³ Moreover, the husband has been obligated by Allah Almighty to take care of his wife, be kind to her, clothe her, feed her and maintain her not only during her pregnancy and delivery, but also during her suckling period. And if the mother does not want to breast feed her child due to any valid reason, they may take the services of some other woman for the purpose, provided that the suckling charges shall be incumbent upon the husband. Various maternity rights are protected through different verses, one of them being:

Mothers shall suckle their children for two full years, —that for such as desire to complete the suckling— and on the father shall be their maintenance and clothing, in accordance with honourable norms. No soul is to be tasked except according to its capacity: neither the mother shall be made to suffer harm on her child’s account, nor the father on account of his child, and on the [father’s] heir devolve [duties and rights] similar to that. And if the couple desire to wean, with mutual consent and consultation, there will be no sin upon them. And if you want to have your children wet-nursed, there will be no sin upon you

so long as you pay what you give in accordance with honourable norms, and be wary of Allah, and know that Allah sees best what you do.²⁴

Apart from numerous Islamic rulings for protection of all forms of maternity rights for women, certain maternity reliefs have also been conferred. It is narrated by Anas bin Mālik: “The Messenger of Allah (ﷺ) granted a concession to pregnant women who fear for themselves, allowing them not to fast, and to nursing mothers who fear for their infants.”²⁵ So, under Islamic law, observing health care of mothers is so essential that the *farā'idh* could even be relieved.

As far as enactment of special measures for maternity protection are concerned, it could be inferred that it is permissible if it is in welfare of collective interest; because Islam encourages taking steps to promote wellbeing and whatever is not explicitly forbidden in Islam is deemed to be permissible.

Article 5: Modification of Social and Cultural Patterns

Article 5 of the Convention binds the States to strive to modify the conduct of men and women with respect to the cultural and social patterns in a way that all forms of stereotypes, prejudices and customary practices based on gender-role discrimination might be eliminated. The Article also outlines the necessity of comprehending maternity as a social function and considering the upbringing of children as the common responsibility of men and women, given that the interest of children has to be upheld in all cases.

Islam is the religion which had arrived to bring the immoral, cruel and inhumane treatments to an end. There are numerous verses and traditions that command to admonish and abolish the prevailing social and cultural practices of inhumane treatment with women. Some of them have been eradicated practically after the arrival of Islam and some still exist. The cultural and social practices of discriminating treatment with women included getting disheartened upon the birth of baby girl, which was prohibited by Almighty Allah in a tone of rage.²⁶ Another detested social practice in Arab was the burial of girls alive which was strictly forbidden and disliked²⁷ and Allah declared that justice on the day of resurrection shall be given to such child after taking her testimony.²⁸ The Prophet Muhammad (ﷺ) also declared such practices *ḥarām* and has multiple times announced the reward of paradise and his intimacy in paradise for those who treat their daughters and sisters well.²⁹ Further, Islamic law explicitly prohibited marrying the women forcefully³⁰, which was and still is a prevailing custom in many areas, and has made their free consent to

marriage obligatory³¹. Moreover, other cultural and social practices included depriving them of financial rights, torturing them and treating them inhumanely. Islam not only vested financial and inheritance rights to them, but also obligated kindness, love and care towards them. Hence, Islam has modified all the discriminating cultural and social practices against women.

The responsibility of children is mutually distributed between both the mother and father in Islam. The father is responsible for maintaining, feeding, clothing, dwelling and managing the affairs of the children; whereas the mother is responsible for completing their suckling period and nourishing them.³² The responsibility of educating them with good and nurturing their character is the mutual responsibility of the parents.

Article 6: Women Trafficking and Prostitution

Article 6 of the Convention directs the State Parties to take measures to mitigate women trafficking and exploitation of prostitution of women. It is noteworthy that the article does not utterly prohibit the institution of prostitution, rather prohibits its exploitation only.

Islam forbids human trafficking in entirety. It has always encouraged emancipation of the already enslaved and prohibited further enslavement. It has denied all forms of illegal trade of human body and parts. Moreover, trafficking for the purpose of forcing someone into prostitution is also particularly prohibited³³.

As far as exploitation of prostitution is concerned, Islamic laws do not negate the exploitation of prostitution of women specifically, but the Holy Quran forbids all forms of sex outside the wedlock³⁴. The injunctions of Islam have backed fornication and adultery with severe sanctions of whipping and stoning to death respectively. The question of exploitation of fornication in Islamic law is irrelevant in this regard, because if the principal issue of fornication is interdicted in entirety, the ancillary issue of its exploitation does not emerge as a problem. It is astonishing that no Muslim State has raised reservation to this article, which was essential to eliminate any assumptions of amounting their silence or non-objection to tacit approval of consensual prostitution.

Article 7 & 8: Equality in Political Role, Representation and Public Life

Article 7 instructs the States Parties to undertake appropriate steps of creation of equality for women in political and public life of the country in order to ensure elimination of discrimination against

women. The right of voting, right to be elected, eligibility of holding public offices, right to participate in formulation of government policy and the right to perform public functions must be granted to women along with the right to participate in non-governmental organizations relevant to the political and public life of the country. Article 8 is an executory provision which requires the States to design strategies to provide women with equal opportunity of representing their Governments at the international law and participating in working with the international organizations.

While commenting over the Islamic law in this regard, Shaheen Sardar Ali states that a detailed study of the Quran indicates no bar on women in political and public life participation.³⁵

When it comes to public life, women in Islam participated in many spheres of public life. They excelled in the field of Hadith Studies (*ʿIlmul Hadīth*), jurisprudence (*Fiqh*), theology (*Kalām*), mysticism (*Tasawwuf*) etc. For instance, *Sahābah* used to approach Hazrat Ayesha to learn jurisprudence and Hadith sciences from her; Hazrat Zainab, the daughter of Hazrat Ali was a profound scholar of theology; Umme Atyqah accompanied the Prophet ﷺ in seven battles etc. There are many such examples of active and efficient social participation of Muslim women.³⁶

Allah has commanded women to participate, alike men, in implementation of good and elimination of bad from the society.³⁷ The men and women are not only the protectors and supporters of each other in social affairs, but also in public affairs. Thus, they are permitted to account the ruler and call for the establishment of Islamic laws through political struggle. She might become the member of *Majlis al-Ummah*, by which she could participate in accounting and monitoring the ruler and express disapproval on any act of his non-fulfilment to the affairs of *Ummah*. She is also allowed to give her *bay'ah* or allegiance (alongside the men) to the *Khalīfah*.³⁸ The modern elections are not equivalent to the Arabic word *bāyi* , rather it is much wider and the oath-taker, i.e. the Prophet ﷺ was the Head of the State along with being the Messenger; hence the confirmation of allegiance to him equated to the women's act of choosing him as the head.

Similarly, women in Islam had also been engaged in law-making. They were also entitled to raise objections to infringement of the grundnorms of Islam i.e. the Holy Quran and Sunnah. This is evident from the incident of Hazrat Umar, when he tried to limit the maximum amount of *Mahr* to 400 Dirhams, a woman objected to it, stating that Umar had no right to restrict the right conferred by Allah

to women in absolute manner. Due the objection, the Caliph of the era reverted back the law to the woman's correction.³⁹

Allah commands all Muslim men and women to practice consultation: "Who (conduct) their affairs by mutual consultation..". The verse did not specify any gender and the practice of Holy Prophet ﷺ to consult his wives in various matters, endorses the right of women to be consulted in all matters of life.

Nevertheless, the Islamic ruling regarding the eligibility of the women to be elected as rulers or sovereigns is contradictory to the notion of this Article. Although there are some proponents of the view that women can act as rulers in Islamic law, but the majority prohibits it.⁴⁰ There are several reasons for this negation, including the prohibition of women's mixing up in men's gathering, requirement of physical and emotional strength, reason, complete alertness, capability of full testimony etc. Allah's Apostle has denied prosperity for the people who appoint a woman as their leader.⁴¹ It could be inferred from this ruling that if in the international representation, woman acts as an absolute power-holder, it would not be permitted, but if she works as a sub-ordinate, it might be allowed.

Article 9: Equality in Nationality

Article 9 of the convention asserts conferment of equal rights with men to women with respect to acquisition, retention and change of nationality. The article stresses that the nationality of the wife shall not be altered or drawn back due to marriage with a foreigner or due to change of husband's nationality; nor shall be forced to change her nationality to that of the husband's. Moreover, second clause of the Article demands equal rights for women regarding their children's nationality, i.e. the children's must not acquire only father's nationality automatically.

Islamic law does not come up with clear rulings regarding the issue of nationality or citizenship of wife or child. But the child bears his father's name along with him according to the commandment of Allah Almighty: "Call them after their fathers"⁴²; and the child is usually attributed to his/her father unless the child is an illegitimate one. This is according to the Hadith⁴³ as well as according to the prevailing Islamic customary laws. Also, the child shall be called on the day of resurrection by his father's name.⁴⁴ A number of Islamic injunctions attribute the child's lineage and name to his/her father. So, it could be inferred that the nationality in Islamic law, such as the lineage and identification must be attributed to that of his father. But

it cannot be claimed as a validly established objection against granting the right of her own nationality to the wife and her children.

Article 10: Equality in Education

Article 10 of the Convention recognizes the right of education for women on equal terms with men, to empower them in all spheres of the society and to eliminate educational discrimination against them. The Article after obligating equal access opportunities to men and women, insists that the States Parties are bound to eradicate gender-role stereotyping from the educational system. It also maintains that the member States must bridge the gap of educational levels between both the genders. The Article strives for exclusion of discrimination and at the same time encourages educational strategies that would boost up women development. It also fosters co-education and equal opportunities of active participation in sports and physical activities.

Islam encourages rather obligates gaining education both for men and women. The very first revealed verse of the Holy Quran commanding to read⁴⁵ reveals the significance level of education in Islam. Almighty Allah mentioned teaching and learning i.e. educational process frequently to highlight its significance.⁴⁶ Allah differentiates the status of those who have knowledge and those who do not.⁴⁷ Numerous supplications in the Holy Quran relevant to gaining and increasing of knowledge have been given.⁴⁸ There are number of traditions regarding the obligation to seek knowledge and its elevated significance. For instance, one of them excludes the teacher and the learner from cursed world⁴⁹ and other announces doubled reward for the one who even educates a slave girl.⁵⁰ Thus, Islam emphasizes on the gain of knowledge and grants high ranks to its achiever.

The clause (c) and (g) of Article 10 of CEDAW are however, not in complete consonance of the Islamic laws. The injunctions of Islam, forbidding the mingling of genders, conversing behind *pardah*, preservation of *ḥayāh* etc. are considered to be opposing towards co-education. Similarly, Islam does not deny sports or physical activities for women, but the term 'equal opportunities with men' would also involve mixing with men, displaying the body etc. which is prohibited in Islam.

Article 11: Equality in Employment and Labour Laws

Article 11 of the Convention clearly demands full and active realization and protection of the right of women to work. Not only outlawing the discriminatory hiring practices against women shall be

sufficient, but also same employment opportunities, rights and free choice of profession which is given to men is required by the article for women. Further, the equal right of women to remuneration and all work-related benefits along with equal value, treatment and quality of work is demanded. Maternity, pregnancy or marital status must not be used as a criterion for selection or dismissal of women from employment, rather social benefits attached to this condition, like child-care facilities, maternity pay leave, allowances etc. must be introduced. Finally, the protection against violence and harm at work places must be assured. In pursuance of this, CEDAW recommended⁵¹ that State Parties must take on effective legal measures to protect women against all kinds of violence at workplaces, including the protection against sexual assault and harassment. States might incorporate civil remedies, compensatory provisions and penal sanctions in their legal systems to enable the protection more efficiently.⁵²

There is no clear prohibition in Islamic laws for the women to work except for forbidding them to mix up with men in order to avoid commission of any sin. Islam grants the women rights to inherit, hold property, transfer it, utilize it and perform all legal transactions within it. Islamic law has prohibited men to snatch or retain the property of women with them.⁵³ Moreover, Islam does not obligate women to maintain their husband or children from their properties, hence giving them an unshared right in it (as stated earlier that the husband is in charge of holding the responsibility of maintenance⁵⁴). This is an additional prerogative of women that makes her position superior to men i.e. no one is entitled to share her property and she has no financial responsibilities, neither of her own nor for husband or children.

So, it has been deduced that the women are allowed to work until they do not interact men in an unpermitted manner. Many scholars have interpreted the verse “To men belongs a share of what they have earned and to women a share of what they have earned...”⁵⁵ as to be revealed for financial shares i.e. women are allowed to earn for themselves along with inheritance rights⁵⁶. As far as violence against women at work places is concerned, as stated above, Islam strictly forbids all kinds of violence against women, may she be at home or at any other place.

But Islam does not support grant of equal employment opportunities to men and women. The works that are men specific i.e. in which exposure, hard labour, physical strength etc. is required are not allowed for women due to the restriction of *pardah* (observance

of not displaying themselves)⁵⁷ and by keeping their physical weakness in view. Allah does not burden a soul more than its capacity and strength.⁵⁸ Thus, if the women work by remaining within their prescribed limits and do not indulge in works which would affect their lives, health or dignity, they are allowed to such employment, otherwise not. It is concluded that the financial and employment rights given to women are far inclusive than those conferred by CEDAW.

Article 12: Equal Access to Health Facilities

Article 12 of the Convention demands that the States Parties must ensure equality of women along with men as far as access to the health care services and voluntary choice of family planning is concerned. Special reference to the focus on grant of appropriate services and adequate nutrition during pregnancy, post natal period and lactation is given by this article.

The injunctions of the Islamic law have in several and various perspectives prescribed the obligations that result in health care and protection. It has not only prohibited eating filthy⁵⁹ and drinking toxic things⁶⁰, but has also forbidden intake of all such things that would result in any form of harm to the mind and body of a person. Further, the Islamic law has granted relief in certain worshipping obligations to those who are sick, travelling, menstruating, lactating or pregnant. The exemption is bestowed on these individuals in order to prevent them from physical and mental burden that would lead to health hazards. For instance, they are vested with release from praying and fasting⁶¹.

Protection of the physical and mental health is not only obligatory on men but also on women, rather Islamic law has granted comparatively extended rights to women by exempting them from worship obligations and forbidding exhaustive external works for them. As stated above Islamic law not only recognizes the health care rights of women along with men, but also imposes a duty on men to assure the grant of these rights and bear the cost of such amenities, particularly those relevant to pregnancy, post natal period and lactation.⁶² Thus, Islamic law would appreciate if the State takes measures to ensure such rights.

As far as the matter of family planning is concerned, there are no clear injunctions of Islam that would amount to prohibition of preventing conception. The term family planning is an extensive one, inclusive of many methods. Some of them are permitted in Islam, while others are not. Nevertheless, there are certain traditions which

are quoted to accept the permission for methods of contraception. It is stated in various *Ahādīth* that the Prophet (P.B.U.H) allowed some of his companions to practice ‘*azl* or coitus interruptus.⁶³ Thus most of the Muslim jurists allow the natural methods of contraception; though there is a debate upon other methods of family planning. However, some Muslim jurists discourage birth control on the basis of the Qur’anic verses which prohibit infanticide.⁶⁴ Ibn Ḥazm in his book *Al-Muḥallā* argued that all these permissive *Ahādīth* of contraception were abrogated by later traditions in which the Prophet (P.B.U.H) declared that contraception is “*al-wa'd al-ṣuḡhrā*” (hidden infanticide).⁶⁵ He also asserted that as the Quran forbids infanticide in the strictest possible terms, hence contraception that is called as hidden infanticide by the Prophet ﷺ is also prohibited. Some also deem family planning to be an attempt of interference with Allah’s plans.

Nonetheless, almost all the jurists allow family planning if child bearing would be dangerous for the mother’s life; because the Holy Qur’an states: “Do not throw yourself into destruction with your own hands.”⁶⁶ But the Islamic law has strong reservation on the method of abortion as family planning. It is agreed upon by the jurists that abortion during or after the stage of ensoulment is prohibited, except for the protection of mother’s life.⁶⁷

It could thus be concluded that this Article of the Convention is partially in consonance with the Islamic injunctions, but it could not be granted absolute approval due to the abovementioned ambiguities and diversity in the term family planning.

Article 13: Equality in Finance and Social Security

Article 13 of the Convention directs the States Parties to enact and enforce all the necessary measures to eradicate discrimination against women in all the areas of economic life and to ensure same financial rights for them, specifically the rights to family benefits, bank loans, financial credits, mortgages etc. and the right of participation in recreational, sports and cultural activities.

Islamic law equally protects the financial rights of both men and women⁶⁸; rather in certain aspects it has vested enhanced rights of women as compared to men. The men are commanded to grant dower to the women whom they marry, as a financial gift of marriage⁶⁹ and the responsibility of maintaining them and providing them with residence, clothing, food, health facilities etc. is also conferred upon the men by the Holy Quran. Women are also endowed with equal right of gaining heritage left by the parents and near relatives⁷⁰, though their shares may vary. As far as the loans, benefits

and mortgages etc. are concerned, Islam has not differentiated between the rights of men and women. The rulings of Islam permitting these rights are general for both the genders and the non-discriminating term of 'Muslims' is inclusive of and denotes the equal rights of both in these regards⁷¹. The only prohibition placed Islam is on all forms of interest. The greatest evidence of equal economic rights is that Hazrat Khadija (R.A.), the first wife of the Prophet ﷺ, was a woman carrying out business of her own and obviously practiced all these financial and economic matters. Islam never raised any objection on this.

Whereas the matter of equivalence in participation of recreational, sports and cultural activities, is somewhat objectionable. These activities are allowed for women in various traditions, but the condition is to remain within the spheres of women specific areas. The Prophet ﷺ himself raced with Hazrat Aisha⁷² and enabled her to see the show of Ethiopians, displaying their skills with spears.⁷³ Islam considers the recreation with family and wives to be the most rewardable one. Allah's Apostle declared that one of the best among amusements is if the man plays with his wife.⁷⁴ However, the equal opportunities as that of men cannot be granted to women in this regard, as their exposure and mingling up with men is prohibited.

Article 14: The Rights of Rural Women

Article 14 of CEDAW requires the State Parties to eliminate discrimination against women in rural areas by providing them with adequate living facilities and conditions; and ensuring specific implementation of all the rights mentioned in this convention with special attention towards women of rural areas. Their equality with men in the fields of economy, participation in rural development and community activities, health facilities, social security benefits, education, skills, employment, other modern forms of living conveniences etc. has to be ascertained by all the States Parties through all the relevant essential measures and special provisions.

The reservations of Islamic law on the equal opportunities of men and women in the aforesaid fields, if any, are mentioned in detail. As far as the rights of rural women are concerned, Islam has not drawn any distinction between urban and rural women, rather it has insisted to grant rights to all Muslim women, wherever they might be residing. All the teachings of Islam regarding women rights are unified and applicable on a whole.

Article 15: Equality before the Law and in Civil Matters

Article 15 of CEDAW ensures the grant of legal autonomy to women and equality with men before the law. It also guarantees equal legal capacity to them in civil matters i.e. contracts, property, representation in courts, litigation etc.

Islamic law confers equal civil obligations and rights on men and women along with equality before law. No distinction is made between rich or poor, black or white in the grant of rights and while imposing duties or sanctions. The terms used while addressing for commandment are usually “Oh you those who believe!” which incorporate both the genders. As stated above, the equality is assured in worship, property, economic, educational, social rights etc. Muslim women have equal rights to men in creation and execution of contracts as well as in ownership and other transactions in property. As far as litigation is concerned, The Holy Quran obliges both men and women without any discrimination to not to hide the truth and to be just.⁷⁵ The Islamic laws of *hudūd* are identical for both; rather in certain conditions (for instance pregnancy and feeding period etc.) women are exempted from *hudūd* punishments. Nevertheless, the difference exists in inheritance shares⁷⁶ and testimony of women in financial matters.⁷⁷

Islam grants almost equal rights to men and women of the freedom to choose their domicile and residence. However, the residence of women might be conditioned with staying at a place with some *mahram* male. As far as the freedom of movement is concerned, the Muslim women do not have truly equal rights as that of men. The holy Prophet ﷺ has prohibited women to travel for a day and night without a *mahram*⁷⁸ Thus, Muslim women do not have absolute right of movement, though some contemporary jurists like Yusuf Al Qardhawi etc. assert to lift this restriction over them by keeping in view the secure travelling facilities in the current era.

To sum up, complete equality of men and women in all aspects of civil matters, rights to residence, movement and litigation cannot be claimed in true sense with regard to Islamic laws.

Article 16: Equality in Family Law

Article 16 of the Convention is the most significant but also the most highly reserved article by the Muslim States. This article demands elimination of discrimination against women in family and marital matters along with assurance of equality of men and women in the right of entering marriage, full and free consent, choice of spouse, rights and responsibilities during marriage and in its dissolution. Further, they are required to be vested with same rights as parents whether they are married or not, equal rights to decide the number and spacing of children and right of family planning, similar rights of guardianship, ward-ship and adoption, personal rights of choosing a family name or occupation and equal rights in property relevant matters. The second paragraph invalidates the betrothal and marriage of a child and directs States Parties to legislate a reasonable minimum age of marriage.

If viewed in the light of Islamic law, many discrepancies are evident in this Article of the convention. Women have equal rights of choice of spouse and in property relevant matters. But, the free consent of both the male and female in minority age is irrelevant in Islamic law and their guardian can conduct their marriage without their consent. Moreover, there is consensus among jurists that adult sane male has the absolute right to enter into marriage by himself, but there exists conflict of jurists regarding the right of Adult Virgin Women to enter into a marriage contract by herself. The majority of jurists consider the marriage conducted by a virgin adult without the guardian to be void. Only Imam Abu Hanīfah allows such marriage if the conditions of *Kafā'ah* and *mahr al mithl* are fulfilled.⁷⁹

Further, the rights and responsibilities of the spouses during wed lock are not the same in Islam; rather they have specified differentiated roles. The husband has the responsibility of provision of maintenance, shelter, clothing and other facilities, whereas the wife has the duty of upbringing of children and taking care of the household. The forms of dissolution of marriage can also not be the same for the spouses in Islamic law. Husband is vested with the absolute right of divorce whereas the wife has the rights of *Khul'* and judicial dissolution (*Faskh*), which are subject to waiving off the financial rights⁸⁰ and existence of valid ground for separation respectively.

Moreover, the prohibition of polyandry for women and permission of polygamy for men is the established rule of Islamic law and hence the notion of same marital rights delivered through this

Article stands contradictory to the Islamic injunctions of marriage rights.

The concept of family planning and its details have been discussed in Article 12 above. The right of choosing a family name, occupation etc. may be exercised by any of the spouses and Islam does not put any clear prohibition on women to exercise this right. The marriage of child if conducted by the father or grandfather is not void in Islamic law; however the option of puberty may be exercised by the child on attaining majority.⁸¹

Article 17 to Article 30: Rules of Procedures, Implementation and Administration of the Convention

The Articles 17 to 30 deal with the implementation of the convention, committee formation mechanism, elections of committee members, format of the reports regarding the legislative, judicial, administrative and other measures adopted to effectuate the convention, committee's tenure and its rules of procedure, committee meetings, obligations of States Parties and other miscellaneous rules regarding the effective implementation of the Convention.

The research paper at hand focuses on the analysis of the substantive provisions of the Convention in the light of Islamic law and does not entail the analysis of procedural laws in its scope. However, there is no apparent conflict of these provisions with the injunctions of Islamic law.

CONCLUSION

The detailed and thorough analysis of the substantive articles of the Convention on the Elimination of All Forms of Discrimination against Women depicts that the Convention is not in complete consonance with the Islamic laws, but it could also not be declared to be contradictory to the said laws in entirety. However, CEDAW has attempted to protect almost all the aspects of the Women rights in an appreciable manner. It is pertinent to acknowledge that even the issues of much trivial nature have not been neglected by the convention, so that no possibility of violation or exploitation might be probable. The Islamic law on the other hand, as proved by the above research grants more extensive and inclusive rights, security and dignity to the women. The differentiation of the roles of both the genders and the distinguished status bestowed upon the women must not be amounted to the stereotype of the practice of discrimination against them. Islamic laws have rather vested women with richer, privileged and honoured rights as compared to those endowed by CEDAW. An endeavour to enable harmony between both the laws

could be exercised by adopting the doctrine of margin of appreciation and broader interpretation of the Islamic laws accompanied by execution of *ijtihād*, keeping in view the demands to stay in pace with the contemporary requirements.

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⁶ Al Qurān, Surāh Al-Mudaththir: Verse 38.

⁷ Al Qurān, Surāh Al-Ḥujurāt: Verse 13.

⁸ Al-Qurān, Surah Al-Nisā: Verse 01.

⁹ Al-Qurān, Surah Al-A'rāf: Verse 189.

¹⁰ Al-Qurān, Surah Al-Ḥijr: Verse 29.

¹¹ Al-Qurān, Surah Al-Isrā': Verse 70.

¹² Al-Qurān, Surah Al-Nisā: Verse 124.

¹³ Al Qurān, Surah Al-Aḥzāb: Verse 35.

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¹⁶ Narrated by Abu Huraira, *Sahīh Al-Bukhārī*, vol. 4, Book 55, Hadith No. 548.

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¹⁸ Al-Qurān, Surāh Al-Ḥajj, Verse: 41

¹⁹ As stated in Hadith narrated by Abdullah b. Buraida: Sahīh Muslim, Book 29, Hadīth 35.

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²² Al-Qurān, Surah Al-Luqmān, Verse: 14 states: "We have enjoined man concerning his parents: His mother carried him through weakness upon

weakness, and his weaning takes two years. Give thanks to Me and to your parents.”

²³ Allah’s Apostle proclaimed highest ranks equal to that of martyrs for the women who die during pregnancy. See for complete Hadith: Sunan Abī Dāwūd, Book 21, Hadith No. 23.

²⁴ Al-Qurān, Surah Al-Baqarah, Verse: 233

²⁵ Sunan Ibn Majah, Book 7, Hadith No. 1737

²⁶ Al-Qurān, Surah Al-Naḥl, Verse: 58-59

²⁷ Al-Qurān, Surah Al-An’ām, Verse: 140

²⁸ Al-Qurān, Surah Al-Tawkīr, Verse: 09

²⁹ Jami’ at Tirmidhi, Book 27, Hadith No. 18; Sunan Ibn Mājah, Book 33, Hadith No. 14; Saḥīḥ Al-Bukhārī, Book 78, Hadith No. 26 etc.

³⁰ Sunan Al-Nisā’ī, Book 26, Hadith No. 25.

³¹ Sunan Al-Nisā’ī, Book 26, Hadith No. 68 and Saḥīḥ Al-Bukhārī, Book 90, Hadith No. 15.

³² Al-Qurān, Surah Al-Baqarah, Verse : 233.

³³ Al-Qurān, Surah Al-Nūr, Verse: 33

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⁴³ Sunan Ibn Mājah, Book 23, Hadith No. 2851.

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⁴⁵ Al-Qurān, Surah Al-‘Alaq, Verse: 01

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⁴⁸ For instance, those mentioned in Al-Qurān, Al-Tāḥā, Verses: 25-28; 114.

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⁵⁰ Saḥīḥ Al-Bukhārī Book 49, Hadith No. 28

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⁵⁴ Al-Qurān, Surah Al-Baqarah, Verse: 233.

⁵⁵ Al-Qurān, Al-Nisā', Verse: 32.

⁵⁶ Niaz A. Shah, Women, *The Koran and International Human Rights Law* (Netherlands: Martinus Nijhoff Publishers, 2006), 223.

⁵⁷ Al-Qurān, Surah Al-Nūr, Verse: 31.

⁵⁸ Al-Qurān, Surah Al-Baqarah, Verse: 286.

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